IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 2659 of 2006
Date of decision : 9.11.2006.

Mohan Singh

.....Appellant.

Versus

Pepsu Roadways Transport Corporation, Nabha Road, Patiala.

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Vinish Singla,Advocate
for the appellant.

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VINOD K. SHARMA,J.(ORAL)

The suit filed by the appellant was dismissed by the Courts below. The learned lower appellate Court has been pleased to hold as under :-

> "Applying the above touchstone in the above case the conduct of the appellant as such that he is proved to have been guilty of misconduct and caused financial loss to his own employer. All these allegations are supported by Ex.D-2 in which the appellant was asked for not taking the passenger, but he misbehaved and challenged the said partly and when he was asked for not wearing uniform, as he was in Kurta and Pajama and both of them replied that they will wear the same uniform and this was a violation of the order of the High Court of Punjab and Haryana. All these allegations are supported by enquiry

conducted in detail as is clear from the enquiry file duly proved and punishment order goes to show that the appellant did not reply to the charge sheet, but after service of notice of dismissal. Even a lenient view was taken against the appellant for stoppage of four annual grade increment such the penalty is provided in the rules and as such the misconduct has been duly defined in the said rules and penalty under rule 20 is that holding the increment as per rule 20(3) and proper procedure under rule 22 is found followed and such act of misconduct has been defined in rule 23 for which he had right to appeal, which he availed u/o 30 and the definition of misconduct and provision of appeal u.o 30 is as under :-

"Acts of misconduct :

The following acts shall be treated as misconduct :

'Rule 23"

i) Conviction by a Criminal Court for an offence, which in the opinion of the punishing authority would warrant his dismissal.

ii) Negligence of duty resulting in or likely to result in monetary loss exceeding Rs. 50/- to the corporation or causing bodily injury or apprehension of such an injury to any other employee.

Iii) Immoral or indecent behaviour.

Rule 30

Appeal :-

An employee upon whom any of the penalties specified in regulation 20 is imposed may file an appeal to such higher authority, if any as specified in Co. 5 of the Appendix “B”

The contention of the learned counsel for the appellant is that under the rules, provision is only for punishment of stoppage of increments without cumulative effect and as such the same cannot be with cumulative effect, therefore, the impugned order cannot be sustained.

I have considered the arguments of the learned counsel for the appellant. The appellant was served with a show cause notice of dismissal. However, the punishing authority by taking a lenient view of the matter has ordered the stoppage of four increments with cumulative effect. Before ordering the stoppage of increments an enquiry was conducted against the appellant. The learned counsel for the petitioner places reliance on the judgment of this Court reported in **Sham Lal Vs. District and Sessions Judge, Ferozepur 1994(4) Recent Services Judgments 681** to contend that the impugned order cannot be sustained as the punishment has to be without cumulative effect. The reading of the judgment shows that the case of the appellant in the matter before the High Court was that punishment of stoppage of increment was awarded without holding proper enquiry for major punishment as stoppage of increment without cumulative effect is not to be treated as major punishment whereas the punishment of stoppage of increment with cumulative effect is to be taken as major punishment.

The learned counsel for the appellant thereafter contended that the learned courts below were wrong in coming to the conclusion that the appellant had not challenged the order passed by the appellate authority. The learned counsel for the appellant submits that the learned courts below were wrong in holding that the order passed by appellate authority was not placed on record of the case and, therefore, this finding cannot be sustained. It may be noticed that despite placing on record the order of the appellate authority, the appellant had not chosen to challenge the same. In view of this, the suit as such was not maintainable as the appellate order was not challenged.

No substantial question of law arises for consideration.

Dismissed.

9.11.2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**